

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 8TH FEBRUARY 2007 / 19TH MAGHA 1928

Crl.Rev.Pet.No. 2105 of 2004(C)

CMP.954/2003 of FIRST CLASS MAGISTRATE'S COURT, KOTHAMANGALAM
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REVN. PETITIONER: COMPLAINANT:

C.K. GEORGE, S/O. KURUVILLA,
AGED 60 YEARS, ENGINEER, CHAKKIATH HOUSE,
KUTHUKUZHAY (P.O), KOTHAMANGALAM.

BY ADV. SRI.GEORGE ABRAHAM

RESPONDENTS: ACCUSED:

1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
2. C.K.JACOB, S/O. KURUVILLA,
AGED 51 YEARS, CHAKKIATH HOUSE,
KOTHAMANGALAM KARA, KOTHAMANGALAM VILLAGE.
3. C.K.PETER, S/O. KURUVILLA,
AGED 47 YEARS, CHAKKIATH HOUSE,
KOTHAMANGALAM VILLAGE, KOTHAMANGALAM.

BY ADV. SRI.V.M.KURIAN
SRI.A.V.THOMAS
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 08/02/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.HEMA, J.

CRL.R.P.NO.2105 OF 2004

Dated this the 8th day of February, 2007

O R D E R

This revision is filed against an order of the Magistrate's Court dismissing a complaint under Section 203 of the Code of Criminal Procedure ('the Code', for short).

2. The revision petitioner filed a private complaint alleging offences under Sections 415, 420, 464, 466, 467 read with Section 34 of the India Penal Code against respondents 2 and 3. As per the allegations in the complaint, revision petitioner is a Civil Engineer, who was employed at Maharashtra till 1970. Respondents 2 and 3 are his younger brothers. They were doing money lending business receiving huge deposits from public. Those were misappropriated by them and the business went into heavy loss. Several criminal and civil cases arose because of the acts of respondents 2 and 3. Though the petitioner and his wife have no connection with the two firms which were run by the respondents-accused and they were never partners of the said firms, they were made parties to several civil and criminal cases filed against the two firms. On enquiry made, the revision petitioner came to know that this happened

because they were shown as partners in the said firm.

3. According to revision petitioner, the accused had forged the signature of the petitioner and his wife so as to make it appear that they are partners of the firm by forging the partnership deed. The signatures of the petitioner and his wife were allegedly forged in the two partnership deeds and the reconstitution of the partnership deed. The signature of another brother of the revision petitioner who is mentally retarded and who is unable to read and write in any language or to take a decision of his own, was also allegedly forged in the document. The accused also created series of forged documents so that the petitioner and his wife are implicated for misappropriation. A complaint lodged by the petitioner was registered at the Devikulam Police Station and it is pending as Crime No.33 of 2000.

4. Another allegation made was that in collusion with an advocate, the accused were able to file a forged vakalath for the revision petitioner and his wife before the Consumer Disputes Redressal Forum, Ernakulam to obtain an ex-parte award. A complaint was filed against the said counsel before the Bar Council of Kerala and it is registered as C.P.No.38/2001. The petitioner and his wife did not engage any advocate in the O.P pending before the Consumer Disputes Redressal Forum. This was done in collusion

with the accused. It is mainly on the above allegations that complaint was filed alleging various offences.

5. The sworn statement of the complainant was taken and thereafter the court below found that the complainant did not produce the alleged partnership deed and did not take any steps to produce the same before the court. It was also found that the petitioner did not produce any documents containing the signatures of the revision petitioner to see whether the signatures are forged. Hence the complainant failed to prove a prima facie case against the accused and the complaint was dismissed. This revision petition is filed against the said dismissal order.

6. A reading of the impugned order will go to show that the complaint was dismissed on two grounds; (1) the non production of the alleged forged document and the failure to take steps to produce the same; and (2) the non production of any document showing the signature of the complainant and another. The first ground is unsustainable and opposed to the facts. The complainant did produce photostat copies of the partnership deeds along with the complaint and this fact is averred in the complaint itself in paragraph 7. The photostat copies are also seen produced before the court. Apart from this, during the sworn statement of the complainant, he had stated that there are documents to prove the case and those

will be produced. This must have been stated with reference to the production of original documents. Despite all these facts, the court committed a serious error in holding that the complainant did not produce the alleged partnership deed and did not take steps to produce the same before the court. Having stated by the complainant that he shall produce the documents, the court cannot say that the petitioner is guilty of failure in not producing the documents or taking steps to produce the documents.

7. The other ground stated for dismissal of complaint also is not sustainable. The allegation that the complainant did not produce any document to prove his signature cannot be accepted, since the complaint itself contains his signatures. At the initial stage of deciding whether the court has sufficient ground to proceed against the accused the court need only look into whether a prima facie case is made out or not. The court must be prima facie satisfied from the averments in the complaint and the sworn statement that there are sufficient grounds to proceed against the accused. If this principle is applied, going by the language of Section 203 of the Code of Criminal Procedure, it can be seen that this is a fit case where the court ought to have been satisfied that there is sufficient ground to proceed against the accused. The court ought to have given sufficient opportunity to get the original documents or cause

production of documents at the time of adducing evidence. In the above circumstances, I am satisfied that the order under challenge is unsustainable. It is liable to be set aside and I do so.

In the result, the order under challenge is set aside and the case is remanded to the court below for fresh consideration and disposal in accordance with law.

This revision petition is allowed.

K.HEMA, JUDGE

vgs.